***THE HONBLE MS. JUSTICE G.ROHINI**

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+WRIT PETITION No.1373 OF 2005

%Dated 14-02-2005

Smt.Bandila Audi Seshamma, w/o Subbulaiah,
Chillakur Mandal, Nellore District. Petitioner

VERSUS

$ 1 The Government of Andhra Pradesh, rep., by its Principal Secretary,

Panchayat Raj Department, Secretariat, Hyderabad. & 11 others.

…..Respondents

! Counsel for Petitioner: Mr. P.Krishna Reddy

^ Counsel for the Respondent Nos.1&2 : GP FOR REVENUE

Counsel for the Respondent Nos.3 to 12 : Mr.M.P.Chandramouli.

<GIST:

> HEAD NOTE:

? Cases referred

1. 1999 (2) ALT 175 (D.B.)
2. 2000 (2) ALD 317
3. 2004 (3) ALD 1 (FB)

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE FOURTEENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 1373 of 2005

Between:

Smt.Bandila Audi Seshamma, w/o Subbulaiah,
Chillakur Mandal, Nellore District.

..... PETITIONER

AND

1 The Government of Andhra Pradesh, rep., by its Principal Secretary, Panchayat Raj Department, Secretariat, Hyderabad.
2 The Revenue Divisional Officer, Gudur, Nellore District.

3 Vema Reddy Sundarrami Reddy S/o.Ramachandra Reddy, 50 yrs,

M.P.T.C.Member, Varagali, R/o.Momidi village, Chillakur Mandal,

Nellore District.

4 Sanaga Balakrishnaiah S/o.Tirumalaiah, aged 54 years,

MPTC member, Muttyalapadu, R/o.Narcharampet, Chillakur Mandal,

Nellore District.

5 Kandala Kusuma Rukmini Jyothi D/o.Rajulaiah, aged 25 years,

MPTC member, Tonukumala, R/o.Tanukumala, R/o.Kalava Konda,

Chillakur Mandal, Nellore District.

6 Tirumala Chetty Ramanammam, W/o.Gopalaiah, 40 years,

MPTC member, Oduru R/o.Punnapevari Palem, Chillakur Mandal.

7. Bomma Bosamma W/o.Meraiah, 55 yars, MPTC member,

Taminipatnam, R/o.Gummalla Dibba, Chillakur Mandal, Nellore Dist.

8 Timmala Raja Sekhar Reddy S/o.Ramachandra Reddy, 38 years,

MPTC member, Chillakur R/o.Chillakur village & Mandal, Nellore Dist.

9 Jogi Nageswara Rao S/o.Venkatasubaiah, 40 years, MPTC member,

Kadivedu R/o.Thimmanagari palem, Chillakur Mandal, Nellore District.

10. Venkatachalagari Ramanaiah S/o.Adiah, 50 years, MPTC member,

Ballavolu, R/o.Ballavolu, Chillakur Mandal, Nellore District.

11 Udatha Rajaiah S/o.Chinnaiah, 51 years, MPTC member, Chintavaram

R/o.Yeruru, Chillakur Mandal, Nellore District.

12 Gaddam Pedapullaiah S/o.Nagaiah, 60 years, MPTC member, Vellipedu,

R/o.Vellipedu, Chillakur Mandal, Nellore District.

(Impleaded as per Court order dt.9.02.2005 in WPMP.2837/2005)

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order, or direction more particularly one in the nature of WRIT OF MANDAMUS, to declare the meeting scheduled to take place on 03-020-2005 to consider no confidence motion against the petitioner is illegal, as the meeting is convened on the basis of notice issued by the Revenue Divisional Officer, Gudur, Nellore District in R.C.C. 38/2005, DATED 05-01-2005 which is illegal and against the rules, and pass such other order or orders.

Counsel for the Petitioner : MR. P.KRISHNA REDDY

Counsel for the Respondent Nos.1&2 : GP FOR REVENUE

Counsel for the Respondent Nos.3 to 12 : Mr.M.P.Chandramouli.

The Court made the following :

THE HONL'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO.1373 OF 2005

ORDER :

The petitioner was elected as President of the Mandal Parishad, Chillakur Mandal on 22-07-2001.

This writ petition is filed questioning the notice dated 5-1-2005 issued by the 2nd respondent – Revenue Divisional Officer, Gudur proposing to convene the meeting of Mandal Parishad on 3-2-2005 at 11.00 am to consider the motion of No Confidence against the petitioner on the basis of a notice received from 10 members of the Mandal Parishad informing that they intend to make a motion expressing want of confidence in the President of the Mandal Parishad.

The petitioner contends that the impugned notice is not in conformity with the provisions of Section 245 of the A.P. Panchayat Raj Act, 1994 (for short, 'the Act') read with Rule-2 of the Rules made under G.O.Ms.No.200, PR & RD, dated 28-04-1998 and therefore the entire proceedings are liable to be declared as invalid.

It is not in dispute that the impugned notice was issued in Form-V annexed to the Rules relating to Motion of No Confidence in Upa-Sarpanch of Gram Panchayat or Vice-President, President of Mandal Parishad or Vice-Chairperson/Chairperson of Zilla Parishad (for short, 'the Rules') made under G.O.Ms.No.200, PR & RD (Mandal-1), dated 28-04-1998 in exercise of powers conferred under Section 245 (1) (2) read with Section 268 of the A.P. Panchayat Raj Act. It is also not in dispute that along with the said notice in Form-V, the petitioner was served with the notice of intention to move Motion in Form-II of the Rules received by the 2nd respondent from 10 members of Mandal Parishad out of 12 members. However, the petitioner alleges that along with the impugned notice in Form-V, a copy of the motion of No Confidence proposed to be made was not enclosed. He also alleges that such a copy of the motion of No Confidence proposed to be made was not even enclosed with the notice in Form II given by the Members of the Mandal Praja Parishad to the 2nd respondent informing their intention to make the motion against the petitioner. It

is contended that enclosing a copy of the motion of No Confidence proposed to be made with both the notice in Form-II as well as the notice in Form-V is mandatory and therefore the entire procedure adopted by the respondents in convening the meeting on 3-2-2005 is not in accordance with law. In the circumstances, this writ petition has been filed on 1-2-2005 to declare the meeting scheduled on 3-2-2005 as arbitrary and illegal and to restrain the respondents from taking any further steps.

At the outset, it is to be noted that this Court by order dated 2-2-2005 while granting time to the learned Government Pleader for Panchayat Raj to produce the record, ordered that the meeting proposed to be held on 3-2-2005 may go on, but in case the motion is carried against the petitioner the same shall not be given effect to.

When the matter is taken up for consideration on 09-02-2005, the learned Government Pleader produced the connected record and stated that the meeting was held on 3-2-2005 and the motion of No Confidence was carried against the petitioner. The said fact has not been disputed by the learned Counsel for the petitioner.

However, the learned Counsel contends that since a copy of the proposed Motion of No Confidence was not enclosed with the Notice in Form-II as well as the notice in Form-V the meeting held on 5-2-2005 was invalid and therefore the entire proceedings are liable to be set aside declaring the same as illegal and unsustainable.

For proper appreciation of the contention raised by the learned Counsel for the petitioner, it is necessary to note the relevant statutory provisions so far as they relate to the Mandal Parishads. Section 245 of the Act which deals with the Motion of No Confidence states that a motion expressing want of confidence in the President of the Mandal Parishad may be made by giving a written notice of intention to move the motion in such form and to such authority as may be prescribed signed by not less than one-half of total number of the members of the Mandal Parishad and further action on such notice shall be taken in accordance with

the procedure prescribed. Rule-2 of the Rules made under G.O.Ms.No.200, dated 28-04-1998 which prescribed the procedure states that a notice of intention to make the motion shall be made in Form-II annexed to the Rules either in English or in Telugu or in Urdu language signed by not less than one-half of total number of the Members of the Mandal Parishad together with a copy of the proposed motion and shall be delivered in person by any two of the members who signed such notice to the Revenue Divisional Officer – Sub-Collector or Assistant Collector as the case may be having jurisdiction. So far as the further steps to be taken, Rule 3 provides that the concerned officer specified in Rule 2 shall then convene and preside over a meeting for the consideration of the motion on a date appointed by him which shall not be later than 30 days from the date on which the notice under Rule 2 was delivered to him and that he shall give to every member of the Mandal Parishad the notice of not less than 15 clear days in Form-V annexed to these Rules either in English or in Telugu or in Urdu language whichever is applicable.

Both Form-II and Form-V annexed to the Rules made under G.O.Ms.No.200, dated 28-04-1998 specify as under :

"A copy of the motion proposed to be made is enclosed."

It is to be noted that though Rule 3 has not made it obligatory to serve a copy of the proposed motion along with the notice issued by the authority convening the meeting, it is a requirement as per Form-V annexed to the Rules. This Court in Y.RAGHAVA REDDY vs. GOVT. OF A.P. and P.BAPU RAJU v. REVENUE DIVISIONAL OFFICER, SANGAREDDY examined the scope and object of Rule 3 as well as the requirement under Form-V and held that enclosing a copy of the proposed Motion of No Confidence with the Form-V notice is not mandatory.

However, the learned Counsel for the petitioner contends that since Rule-2 expressly provides that the notice of intention to make the Motion of No Confidence in Form-II together with a copy of the proposed motion shall be delivered to the Revenue Divisional Officer, it is clear that such requirement is mandatory and cannot be dispensed with on any ground whatsoever. The learned Counsel vehemently contends that since in the case on hand the copy of the proposed

motion was not enclosed to the requisition made by the Members of the Mandal Parishad in Form-II, the same is not in compliance with the mandatory requirement under Rule 2 and therefore the consequential notice issued by the 2nd respondent in Form-V shall also be held to be vitiated.

The learned Government Pleader for Panchayat Raj appearing for the respondents at the outset submits that the allegation of the petitioner is absolutely false and that as a matter of fact the motion proposed to be made by the members of the Mandal Parishad was served on the 2nd respondent along with the notice in Form-II.

On a perusal of the record placed before this Court, I found that ten members out of the 12 members of the Mandal Parishad, Chillakur gave a letter to the 2nd respondent informing him that the said Members intend to move No Confidence Motion against the writ petitioner who is the President of the Mandal Parishad as she lost the confidence of the majority of the members. The said letter signed by the ten members runs as under :

> *"We bring it your kind notice that the following undersigned persons were elected as members of the M.P.T.C. for Chillakuru Mandal parishath. One Bandili Audhi Seshamma was elected ass Mandal Parishad President on 22-7-2001. We intended to move no confidence motion against the said Audhiseshamma, as she has not functioning it properly and she is not available to us as well as general public. On account of it the development programmes in the above said Mandal were seriously affected. Hence we have decided to move no confidence motion against her 10 out of 12 members move the same as she lost the confidence. We are here with enclosing form No.II to enable you to call for no confidence motion as provided under the rules."*

It is also stated that they are enclosing the notice in Form II so as to convene a meeting to move No Confidence Motion as provided under the Rules. The said letter was signed by the ten members. The Form-II notice enclosed with the said

letter was also signed by the said ten members and it was personally handed over to the 2nd respondent by two of the said members on 5-1-2005. Thereafter, the 2nd respondent issued the notice in Form-V enclosing the Form-II notice received by him from the ten members as well as the letter addressed by the said ten members to the Revenue Divisional Officer.

Thus, it is clear that 10 out of the 12 members of the Mandal Parishad while expressing their no confidence in the petitioner, informed the 2nd respondent that they intend to move a No Confidence Motion. The letter signed by the ten members contains the reasons and in categorical terms it is expressed that the petitioner lost their confidence. Though it is in the form of a letter addressed to the 2nd respondent, undoubtedly it is nothing but the proposed motion. Nothing has been placed before this Court to show that either under the Act or under the Rules, a specific form is prescribed for the motion proposed to be made. In the absence of any such specific form, I do not see any justifiable reason to hold that the letter signed by all the ten members in which they categorically expressed their No Confidence in the petitioner is not the "*proposed motion*" as specified under Rule 2 of the Rules.

Admittedly, the said letter was enclosed to the Form-II as well as the Form-V notices and was served upon the petitioner. In the circumstances, the allegation of the petitioner that the proposed motion was not enclosed with the Form-II requisition itself is factually incorrect. Even otherwise, since admittedly in the meeting held on 3-2-2005 the motion was carried against the petitioner and 10 out of the 12 members raised their hands against the continuation of the petitioner expressing their dissent against her, I am of the view that the mere fact that the proposed motion was not in a particular form has not resulted in any prejudice to the petitioner. As held by a Division Bench of this Court in Y.RAGHAVA REDDY's case (1 supra) and reiterated by the Full Bench in K.SUJATHA v. GOVERNMENT OF ANDHRA PRADESH AND ANOTHER the Legislature has not provided that non-compliance of procedural provisions of service of notice or the form of notice would render the Vote of No Confidence invalid and the object of procedural law is only to apprise the member of the President that the Vote of No Confidence would be held on a particular date and time for consideration of No Confidence.

For the aforesaid reasons, I do not find any substance in the contentions raised by the petitioner.

The Writ Petition is devoid of any merit and the same is accordingly dismissed. No costs.

Needless to mention that the interim order dated 2-2-2005 shall stand vacated.

_____

14th February, 2005.

gbs

Note: C.C.in two days.

L.R.Copy to be marked.

(B/o)

GBS

One fair copy to theHon’ble Ms.Justice G.Rohini

(For her Lordship's kind perusal)

To

1 The Principal Secretary, Government of Andhra Pradesh, Panchayat Raj Department, Secretariat, Hyderabad.
2 The Revenue Divisional Officer, Gudur, Nellore District.

3) Two CCs to G.P. for Revenue, High Court of AP Bldgs, Hyderabad (OUT)

4. Two CD copies.

5. The Under Secretary, Union of India, Ministry of Law,

Justice & Company Affairs, New Delhi.

6. The Secretary, A.P.Advocates Association Library,

High Court buildings, Hyderabad.

7. 8 L.R.Copies.